

ENTERED ON  
APR 10 2007  
DOCKET

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 7
	)	
EDWARD BRANTLEY,	)	CASE NO. 04-95172-MHM
	)	
Debtor.	)	
<hr/>		
DECISION ONE MORTGAGE COMPANY,	)	
LLC, and OLD REPUBLIC NATIONAL	)	
TITLE INSURANCE COMPANY,	)	
	)	
Plaintiff,	)	<b>ADVERSARY PROCEEDING</b>
	)	<b>NO. 04-9176</b>
v.	)	
	)	
EDWARD J. BRANTLEY,	)	
EDWARD J. BRANTLEY, P.C.,	)	
	)	
Defendants.	)	

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT  
AND DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

This adversary proceeding is before the court on the parties' cross motions for summary judgment. Plaintiffs seek a determination that their claim against Debtor is nondischargeable pursuant to §523(a)(4). Defendants assert that Plaintiffs have no claim against Debtor. The material facts are undisputed.

During 2001 and 2002, Debtor,<sup>1</sup> who was an attorney licensed in Georgia, was an "Approved Attorney" for Plaintiff Old Republic National Title Insurance Company

---

<sup>1</sup> Apparently, Debtor conducted his law practice through his professional corporation, Edward J. Brantley, P.C. That professional corporation, however, is not a debtor in this or any other bankruptcy case and is, therefore, not subject to a determination regarding nondischargeability and is not a proper party defendant.

("Old Republic"). Plaintiff Decision One Mortgage Company, LLC, is a mortgage lender ("Decision One"). In June, 2002, Old Republic issued to Decision One a Closing Protection Letter, which provided that Old Republic would reimburse Decision One for any actual loss incurred in connection with real estate closings conducted by Debtor.

On or about June 24, 2002, in connection with a scheduled closing of a residential real estate loan to Nicole Harris, Decision One wired \$238,902.14 to Debtor's Trust Account to be used to close the loan transaction. The closing did not occur. Decision One demanded the return of the funds wired to Debtor's Trust Account, but Debtor failed to return the funds.

On August 2, 2002, summons issued on a civil proceeding, Civil Action No. 02-1-6532-28, filed by Plaintiffs against Debtor in the Superior Court of Cobb County (the "Cobb Civil Action"). Prior to trial, that proceeding was stayed by the filing July 2, 2004, of Debtor's bankruptcy petition.

On August 13, 2003, in response to a complaint by the Disciplinary Committee of the State Bar of Georgia, Debtor filed a petition for the voluntary surrender of his license to practice law in Georgia. By order entered October 20, 2003, the Georgia Supreme Court accepted Debtor's surrender of his law license, commenting that his "surrender is tantamount to disbarment."

On October 4, 2004, a criminal indictment was issued charging Debtor with theft by conversion, theft by deception and theft by taking. On that same day, a bench warrant was issued for Debtor's arrest. Debtor was arrested November 26, 2004 and remained incarcerated until March 18, 2005, when he entered a guilty plea to theft by conversion. He was accorded first offender treatment and was sentenced to time served

plus nine years probation. As a condition of his probation, Debtor was ordered to pay restitution in the amount of \$216,902.13, payable at \$3,615 per month.

By order entered May 5, 2005, this court granted Plaintiffs' motion for relief from stay to continue litigating the Cobb Civil Action.<sup>2</sup> The instant adversary proceeding had been filed October 1, 2004, but Plaintiffs' claim against Debtor remained unliquidated.

On December 9, 2005, Defendants, Defendants' insurance company, and Plaintiffs reached a settlement of the Cobb Civil Action. In connection with that settlement, Plaintiffs executed a "Release of All Claims and Indemnity Agreement" (the "Release"). The releasees under the Release were Defendants and Defendants' insurance company, OHIC Insurance Company ("OHIC"). In return for payment by OHIC of \$62,500, the releasees were released from:

any actions, causes of action, claims, demands, damages, costs, loss of services, expenses and compensation whatsoever that [Plaintiffs], or [Plaintiffs'] heirs, executors, administrators, and assigns have or may have, directly or indirectly, whether known or unknown, against any of the releasees, because of any known or unknown damage, or any other claim alleged to result from alleged professional negligence of Edward J. Brantley by converting loan proceeds for his own personal use and benefit.

This Release includes, but is not limited to, all claims made or which could have been made in any manner connected with the [Cobb Civil Action]. While this Release described specifically the foregoing civil action, it is intended as a general release of the releasees without limitation by the undersigned....

Upon the execution of this release, the undersigned agrees to cause the [Cobb Civil Action] and any claims which were or could have been asserted by [Plaintiffs], to be dismissed with prejudice with no further claims for any costs, fees or expenses to be made against the releasees.

---

<sup>2</sup> Related to the Cobb Civil Action, a declaratory judgment action had been filed by OHIC Insurance Company, Debtor's liability insurance carrier, to determine whether and to what extent Plaintiffs' claims were within Debtor's coverage. Plaintiffs were granted relief from the stay to continue that action, as well.

On December 21, 2005, Plaintiffs voluntarily dismissed with prejudice the Cobb Civil Action.

On July 31, 2006, Debtor filed in Cobb Superior Court a petition to modify the terms of his probation. Specifically, Debtor sought removal of the provision requiring payment of restitution. By order entered October 10, 2006, Debtor's petition was granted, providing:

It was found that the amount of actual or possible damages upon which the court based its restitution award was settled by agreement between the alleged victims and Defendant in late 2005. Therefore, it is so

ORDERED that Defendant's probation be modified to show that the restitution requirement of probation is satisfied and no further restitution is owed....

Based upon the Release, Debtor asserts that Plaintiffs no longer have any claim against Debtor, as Plaintiffs' claim was liquidated by settlement and was paid in full by Debtor's insurer. Any and all other claims Plaintiffs had or may have had, including the claims asserted in this adversary proceeding, were released.

Plaintiffs assert that they did not intend to release any claim but the malpractice claim asserted in the Cobb Civil Action, and that they intended to retain and pursue the claims asserted in this adversary proceeding. Plaintiffs cited no case law to support their contentions that their intentions are of any relevance in interpreting the Release or that their intentions may be employed to vary the terms of the Release.

The language in the Release is broad and, as quoted above, is not limited to the claims asserted in the Cobb Civil Action, nor does Release exclude the claims asserted in

this adversary proceeding. The Release itself describes its breadth and scope: "While this Release described specifically the foregoing civil action, it is intended as a general release of the releasees without limitation by the undersigned."

Under Georgia law, a general release, in the absence of fraud, will bar any cause of action by the parties executing such release. *Glover v. Southern Bell Telephone & Telegraph Co.*, 229 Ga. 874, 195 S.E. 2d 11 (1972). Such a release is a contract and, if not ambiguous, it is not subject to interpretation or modification based upon extrinsic evidence. *Kaiser Aluminum & Chemical Corp. v. Ingersoll-Rand Co.*, 519 F. Supp. 60 (S.D. Ga. 1981).

Regardless of Plaintiffs' assertions now that they did not intend the Release to apply to any claim but the malpractice claim asserted in the Cobb Civil Action, the broad language of the Release unambiguously released Defendants from liability for *any* claim that was or could have been asserted by Plaintiffs. Assuming the claims described in this adversary proceeding were in some manner different from the claims asserted in the Cobb Civil Action,<sup>3</sup> the claims in this adversary proceeding nevertheless fall within the description of the matters that Plaintiffs released. Plaintiffs' claim against Debtor has been paid in full. Therefore, no issue of dischargeability remains. Accordingly, it is hereby

---

<sup>3</sup> The civil procedure rules of both the bankruptcy courts and the Georgia courts provide for notice pleading of claims for relief. Plaintiffs plead facts, not legal theories. The facts pleaded in the Cobb Civil Action are essentially the same as those in this adversary proceeding.

**ORDERED** that Defendants' motion for summary judgment is *granted*. It is further

**ORDERED** that Plaintiffs' motion for summary judgment is *denied*.

**The Clerk, U.S. Bankruptcy Court, is directed to serve** a copy of this order upon Plaintiff's attorney, Defendant's attorney, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 18<sup>th</sup> day of April, 2007.

  
\_\_\_\_\_  
MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE